

Liar, Liar, (Under)Pants on Fire

By former Associate Ethan Don

As recently reported by the Orlando Sentinel an adult store has been sued by a former employee after the store's owner required all sales staff to submit to a polygraph examination. According to the lawsuit, the store's president was seeking to resolve the loss of several thousands of dollars of merchandise. In the lawsuit, the former employee alleges that she was terminated as a result of failing the polygraph examination.

Although this case is ongoing in Florida, it provides an excellent opportunity to remind Maryland employers of the federal and state laws that govern the use of polygraph examinations or lie detector tests. Under the federal Employee Polygraph Protection Act of 1988 (Act) employers are generally prohibited from using lie detector tests either for pre-employment screening or during the course of employment. Requiring or requesting any employee or job applicant to take a lie detector test, or discharging, disciplining, or discriminating against an employee or job applicant for refusing to take a test or for exercising other rights under the Act is a violation of the Act. There are a few exemptions, the broadest of which applies to employees "reasonably suspected of involvement in a workplace incident that results in economic loss to the employer and who had access to the property that is the subject of an investigation." The federal law permits civil actions to be brought by employees or prospective employees.

Maryland law is stricter. "An employer may not require or demand, as a condition of employment, prospective employment, or continued employment, that an individual submit to or take a polygraph examination or similar test." (Md. LABOR AND EMPLOYMENT Code Ann. § 3-702). Violation of this provision is a misdemeanor and can subject the employer to a fine of up to \$100. Maryland law also has exemptions, but they are primarily limited to employees in law enforcement or similar capacities. However, an aggrieved employee cannot file a civil suit for violations of the Maryland law.

Employers should always seek legal counsel before requesting or requiring any prospective employee or current employee take a lie detector test.